



## Governing Body

328th Session, Geneva, 27 October–10 November 2016

GB.328/INS/12(Rev.)

Institutional Section

INS

Date: 4 November 2016

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### TWELFTH ITEM ON THE AGENDA

## **Complaint concerning the non-observance by the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), submitted under article 26 of the ILO Constitution by several delegates to the 104th Session (2015) of the International Labour Conference**

#### **Purpose of the document**

This document has been drawn up in response to the Governing Body's decision to consider this matter at its October–November 2016 session. The document contains the information provided by the Government of the Bolivarian Republic of Venezuela and the social partners on the issues raised in the complaint. It will be for the Governing Body to adopt the necessary decisions as to the procedure to be followed in respect of this complaint.

**Relevant strategic objective:** Promote and realize standards and fundamental principles and rights at work.

**Policy implications:** None.

**Legal implications:** None.

**Financial implications:** Depending on the decision of the Governing Body.

**Follow-up action required:** Depending on the decision of the Governing Body.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** GB.326/INS/9(Rev.); GB.326/PV.



1. In its 326th Session (March 2016), the Governing Body: (a) taking into account the latest examination by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to many of the issues raised in the article 26 complaint, contained in document GB.326/INS/9(Rev.), requested the Government and the social partners to provide detailed information on all the issues raised in the complaint; and (b) deferred to its 328th Session (November 2016) the decision to consider the appointment of a commission of inquiry.
2. In response to the Governing Body's request, information was provided by the Government in a communication dated 12 September 2016 and by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE) in communications dated 24 May, 30 August and 26 September 2016. These communications are summarized in the Appendix to this document. Their full text is available to constituents.
3. The Government states that, despite its goodwill, no plan of action for social dialogue has been agreed on, owing to the complex political situation in the country. The Government denies that FEDECAMARAS and its affiliated organizations and leaders have suffered exclusion or harassment. The Government states that it would not be appropriate to set up a Commission of Inquiry, in light of the fact that: (i) with regard to Convention No. 87, the Governing Body previously decided to refer the allegations in question to the Committee on Freedom of Association as a part of Case No. 2254; (ii) consultations are held with the social partners on the setting of the minimum wage, in accordance with Convention No. 26 (a fact recognized by FEDECAMARAS in 2014); and (iii) the complaint makes no mention of non-observance of Convention No. 144, using, rather, the generic term "cases of lack of consultation".
4. FEDECAMARAS and the IOE denounce: (i) the failure to set up round tables in accordance with the commitments made by the Government as a part of discussions relating to the complaint and report that, despite repeated efforts by FEDECAMARAS, as at 26 September 2016, no meeting had been held; (ii) the exclusion of FEDECAMARAS from social dialogue, with particular reference to the adoption by the Government, without consultation with FEDECAMARAS, of measures with a significant economic and labour impact, such as minimum wage increases or the adoption of a temporary labour regime or of economic emergency decrees, as well as the failure to invite FEDECAMARAS or its affiliated organizations to participate in the Council on Productive Economy; and (iii) widespread intimidatory actions and the heightening of the campaign stigmatizing and discriminating against FEDECAMARAS, its affiliate organizations and its leaders, including repeated incitements to hatred and intimidation against it. In the belief that the Government continues to systematically violate International Labour Organization Conventions, FEDECAMARAS and the IOE look to the Governing Body to take decisive action and to consider the appointment of a Commission of Inquiry.
5. In a recent communication of 17 October 2016, the IOE and FEDECAMARAS denounce that on 6 October 2016 pro-government groups organized an intimidatory public protest against FEDECAMARAS, in order to blame the organization for the public transport crisis, and accusing it of waging an economic war and hiding or hoarding spare parts, tyres, batteries and other accessories. The communication alleges that around 300 people congregated threateningly in front of the FEDECAMARAS headquarters, shouting slogans against the organization and blocking road access in the surrounding streets. It further notes that the protest was broadcast on the state television channel, as a further attack on FEDECAMARAS. The communication also denounces that on 4 October 2016 the Minister of the Popular Power for Industry and Trade falsely declared that FEDECAMARAS had been invited to participate in the Council on Productive Economy but had not attended the meetings with the Government. FEDECAMARAS clarifies that it had only been invited to

the Council's launch ceremony, but never to participate in the Council, albeit being present at such launch event.

6. In response to the communication of the IOE and FEDECAMARAS, in a communication of 25 October 2016, the Government denies the allegations that the protest in front of the FEDECAMARAS building was carried out by pro-government groups, or that it constituted a form of intimidation by the Government. The Government highlights that: (i) as admitted by FEDECAMARAS in its communication, it was a public protest by trade unionists, and the police were present to prevent the occurrence of any illegal incidents (none having occurred); and (ii) peaceful protests are a constitutional right linked to freedom of association and, in this regard, there was no violation of Convention No. 87. The Government further notes that FEDECAMARAS' admission of having been invited to the event launching the Council on Productive Economy illustrates the Government's goodwill towards social dialogue.
7. In accordance with article 26 of the Constitution, it is for the Governing Body to take the necessary decisions concerning future action on this complaint.

### **Draft decision**

8. *The Governing Body is invited to decide on the follow-up to be given to the complaint submitted by virtue of article 26 of the Constitution.*

## Appendix

### **Communications from the Government of the Bolivarian Republic of Venezuela, the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE)**

#### ***Government of the Bolivarian Republic of Venezuela***

In its communication dated 12 September 2016, the Government denies that it has violated Conventions Nos 26, 87 and 144, and reaffirms both its commitment to comply with these instruments and its desire to provide the necessary answers to the supervisory bodies of the ILO. The Government refers to its previous communications and statements to the Governing Body in which it repeatedly drew attention to the legal and procedural flaws in the handling of this complaint, including the lack of tripartite consensus required for its admissibility.

The Government reports that, unfortunately and despite its willingness, it has been impossible to implement the “Plan of action on social dialogue” proposed at the 326th Session of the Governing Body (March 2016), owing to the complex political situation in the country. The Government states that the issues underlying the complaint are political in nature and that FEDECAMARAS is conspiring (as shown by the participation of its then President in the 2002 coup d’état) to maintain a partisan, confrontational attitude towards the Government (as demonstrated by the support shown by its leaders and representatives for the referendum to recall the President of the Republic, and its actions to encourage workers to join a march against the Government). The Government deplores the fact that FEDECAMARAS, by straying from its mission to represent employers, is acting as a political opposition organization and is using the ILO and its supervisory bodies in its campaign against the Government.

The Government denies the baseless arguments that have been repeatedly levelled against it before the ILO supervisory bodies. It holds that FEDECAMARAS is not excluded or marginalized, as can be seen from the participation of many of this organization’s chambers and businesses in the processes of dialogue, technical discussion, agreement and negotiation, in particular the active participation of the business sector in the National Council on Productive Economy, and from Government contacts and support in order to improve productivity. The Government states that the country is experiencing a complicated economic situation due to the drop in petroleum prices and the destabilizing actions of private economic groups. The Government considers that this has led to a flurry of statements and demonstrations by both government and private enterprise representatives, which shows that there is complete freedom of expression in the country, with institutions in place to hear the complaints of people who feel that they have been affected, insulted or slandered.

The Government flatly denies that FEDECAMARAS leaders have been attacked, harassed or persecuted and it reiterates its desire for dialogue, respect and understanding with the country’s enterprises and employers, which is why it also reiterates its commitment to sustain efforts in order to pursue and strengthen broad, inclusive social dialogue, based on respect for the Constitution and laws of the country.

Lack of grounds for establishing a Commission of Inquiry  
in relation to Convention No. 26

The Government states that in the country the national minimum wage is universally protected and guaranteed and it is precisely FEDECAMARAS and the capitalist employers that dislike the national minimum wage policy. The Government again emphatically refutes the allegations that it approved increases in the minimum wage without tripartite consultation and that for 16 years it has not held a single genuine consultation or meeting with FEDECAMARAS to discuss this matter. The Government recalls that these allegations were refuted before the Committee on the Application of Standards at the 103rd Session of the International Labour Conference (their erroneous nature being illustrated by a press release reviewed by the Conference concerning the minimum wage increase of 1 May 2014, which reported statements by the President of FEDECAMARAS himself indicating that “this year they were consulted sufficiently in advance”). The Government stresses that, in the light of the discussion of this matter in June 2014, the Committee on the Application of Standards did not express concern about this case, since the allegations had proved to be untrue.

The Government states that it does indeed hold consultations with the social partners, on equal terms, but draws attention to the fact that it retains the ultimate decision-making power in this case, as the employers have recognized. In this respect, the Government refers to the comments made by the ILO supervisory bodies to the effect that the consultations required under Convention No. 26 do not require that an agreement be sought, but rather are intended to assist the competent authority to take a decision. The Government also recalls that in its recent General Survey on minimum wage systems, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) highlighted the positive features of the country’s system (paragraphs 91, 143, 149, 163, 182, 189, 255, 276, 306 and 313). Furthermore, in its 2015 report, the CEACR, in analysing the application of the Convention by the Bolivarian Republic of Venezuela, did not record any alleged violations and merely requested that it guarantee consultation and participation, on equal terms, of the most representative organizations.

Lack of grounds for establishing a Commission of Inquiry  
in relation to Convention No. 87

The Government recalls that in 2004 a complaint was lodged under article 26 of the ILO Constitution alleging non-application of Conventions Nos 87 and 98 and that in March 2011 the Governing Body decided: (i) not to refer the complaint to a Commission of Inquiry; (ii) to send a high-level tripartite mission to address the issues relating to Case No. 2254 before the Committee on Freedom of Association; and (iii) to close the procedure. The Government also recalls that in January 2014, a high-level tripartite mission did take place and its report was discussed in March 2014 by the Governing Body, which decided to submit the report to the Committee on Freedom of Association for its consideration in the framework of the examination of Case No. 2254. The Government states that the new complaint lodged in June 2015 concerns the same facts and rehearses the same arguments as Case No. 2254 and that in both March 2011 and March 2014 the Governing Body consistently held that these allegations should be considered by the Committee on Freedom of Association. The Government considers that the employers cannot fail to be aware of the Governing Body’s decisions.

The Government also states that on several occasions both the Committee on Freedom of Association and the CEACR have required the complainants to adduce further arguments and proof of their allegations. The Government considers that the fact that this has not been done shows that many of the allegations in Case No. 2254 are false and unfounded and that, for this reason, the supervisory bodies cannot take any further action on them.

Lack of grounds for establishing a Commission of Inquiry  
in relation to Convention No. 144

The Government states that the complaint makes no mention of supposed violations of Convention No. 144 (tripartite consultation concerning international labour standards) and that it merely contains a general reference to “incidences of failure to hold consultations”. The Government recalls that, as the ILO has pointed out, the Convention deals solely with tripartite consultation on ILO standards-related activities, such as ratification and application of its standards, and does not cover the holding of consultations on issues of social or economic policy.

The Government maintains that it fully complies with the Convention and points out that the CEACR, in its 2015 and 2016 reports, only asked the Government for information concerning consultations on international labour standards and did not record any failure to comply in that respect. The Government says that it has always forwarded copies of the reports on Conventions, and that, for example, the Government recently received a response from FEDECAMARAS regarding consultation on the new Protocol and Recommendation on forced labour.

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In light of the previous considerations, the Government asks the Governing Body to decide not to appoint a Commission of Inquiry into the complaint.

***The Federation of Chambers and Associations  
of Commerce and Production of Venezuela  
(FEDECAMARAS) and the International  
Organisation of Employers (IOE)***

In its communications of 24 May, 30 August and 26 September 2016, the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE) allege that the Government has persistently and increasingly violated Conventions Nos 26, 87 and 144, failed to comply with the recommendations of the 2014 high-level mission and the ILO supervisory bodies, including the conclusions of the Committee on the Application of Standards adopted in the 104th Session of the International Labour Conference (in 2015) and failed to honour the undertaking that it gave at the 326th Session of the Governing Body (March 2016) to set up social dialogue round tables. FEDECAMARAS has expressed concern over the said violations, both on social media and to the Government itself, but has not received a reply.

**The Government’s failure to set up the round tables as  
promised during the discussion of this complaint**

FEDECAMARAS and the IOE recall that, during the discussion of this complaint, the Government undertook, before the March 2016 Governing Body, to implement an action plan which included the setting up of a round table between representatives of the Government and FEDECAMARAS in order to address issues related to the complaint and other matters, as well as the commitment to hold consultations in writing. It was proposed that a schedule of fortnightly meetings should be drawn up, firstly, with FEDECAMARAS and then with independent workers’ organizations, and that joint meetings might be held later. In this regard, FEDECAMARAS and the IOE report that FEDECAMARAS sent several communications to the Government to ensure that the round tables really took place, but it did not receive a reply. On the contrary, they state that the President of the Republic, in public speeches broadcast on the national channel on 30 April and 3 May 2016, declared that he was not prepared to engage in any dialogue with FEDECAMARAS. The IOE and

FEDECAMARAS believe that the Government has not honoured its commitment and state that, as of 26 September 2016, no meeting had been held.

### Exclusion from social dialogue and the adoption of government measures of great significance for the economy and labour without consulting FEDECAMARAS

The IOE and FEDECAMARAS complain that the latter was excluded from discussions on government measures with a profound impact on the economy and labour, which were adopted without engaging in social dialogue and without consulting the organization most representative of employers, thereby violating ILO Conventions Nos 26 and 144 and the undertaking given by the Government at the March 2016 Governing Body session to consult FEDECAMARAS when taking government and legal decisions on labour matters. These measures include: (i) increases in the minimum wage and the value of the *cestaticket socialista* (food voucher) on 29 April and 12 August 2016 (FEDECAMARAS issued press statements expressing its opposition to the practice of introducing successive wage increases without conducting a tripartite dialogue, while the President of the Republic admitted he would never consult FEDECAMARAS in order to seek its approval for increases in the minimum wage and stated that the most recent increase was “a bold, precautionary move of which nobody was aware and, given that the bandits were continuing their war, he wanted to catch them by surprise”); (ii) the adoption of new transitional labour regulations, deemed by the IOE and FEDECAMARAS to be in breach of other ILO Conventions, and on which independent workers’ organizations, such as FADESS, ASI and UNETE, were not consulted; (iii) decrees declaring an economic emergency (two further decrees declaring an economic emergency enacted on 13 May and 13 September 2016 suspended constitutional guarantees on economic matters for a total of 14 months), regarding which FEDECAMARAS publically expressed its concern and warned that such measures would exacerbate the crisis faced by the population. The IOE and FEDECAMARAS add that these decrees are part of the Government’s campaign to stigmatize the business and trade union sectors, since the recitals attribute the poverty suffered by the Venezuelan population to an economic war allegedly waged by certain sectors of the national economy, which are accused of having a hostile, destabilizing and obstructive attitude towards access to essential goods and services. Furthermore, it is claimed that these decrees include punitive measures against employers, thus enabling the Government to take the necessary action to ensure that the private sector provides the support required by the public sector. At the same time, they call on the armed forces and citizen security services to intervene in order to ensure that food is distributed and placed on the market and they make it possible to limit and restrict commercial and financial operations.

### Proliferation of acts of intimidation and intensification of the campaign to stigmatize and discriminate against FEDECAMARAS and its affiliated companies and leaders

The IOE and FEDECAMARAS allege that acts of intimidation and stigmatization have intensified, going from insults to a wider range of threats made by the Head of State and other public bodies, which is a clear breach of Convention No. 87. In particular, they cite: (i) public speeches made by the President of the Republic on the national channel on 30 April and 3 May 2016 in which he made intimidating accusations against FEDECAMARAS and delivered statements inciting public hatred of the institution and its President (Mr Francisco Martínez García), its former President and member of the ILO Governing Body (Mr Jorge Roig) and the President of the Empresas Polar group (Mr Lorenzo Mendoza), by depicting them as enemies of the workers and curtailers of labour rights; (ii) use of a state television channel (Venezolana de Televisión) to call on the population to go into action against FEDECAMARAS (programme entitled “Zurda Konducta” shown on 25 April 2016); (iii) diatribes against FEDECAMARAS by the President of the Republic at an international press conference on 17 May 2016, singling out FEDECAMARAS, CONSECOMERCIO



and Mr Lorenzo Mendoza (to whom they alluded without mentioning his name) as the only non-participants in a drive to boost the economy initiated by the National Council on Productive Economy – in this regard, the IOE and FEDECAMARAS explain that it was the President of the Republic himself who chose, assigned and swore in 45 people to participate in the round table meetings of the Council and that he never invited FEDECAMARAS or any other affiliated organization, such as CONSECOMERCIO or others, to take part; (iv) in response to the views expressed in the media by FEDECAMARAS following the increase in the minimum wage in August 2016, the President of the Republic and other government spokespeople mounted a campaign of intimidation and harassment against FEDECAMARAS and its bodies and affiliated companies, by employing numerous derogatory and pejorative terms such as “coup participants”, “bandits” or “exploiters” and accusing them of “hiding products from the people”; and (v) workers and the general population were encouraged on the public media and state television programmes to rise up in protest against FEDECAMARAS after the organization was accused of wanting to close businesses and organize a general strike on 1 September 2016 in order to cause chaos and public disorder (on that date, the opposition parties had organized a march in support of a referendum to recall the President of the Republic).

In addition, the IOE and FEDECAMARAS report violations of the fundamental principles of freedom of association and collective bargaining and acts of intimidation and harassment targeting a group of companies in the food and drinks sector and the country’s main privately owned industrial conglomerate (Empresas Polar) which is affiliated with FEDECAMARAS’ member organizations (the violations have given rise to Complaint No. 3178 before the Committee on Freedom of Association). The IOE and FEDECAMARAS claim that a systematic campaign of harassment is being conducted in the media and on social networks (programmes which, at times, include reports specifically aimed against the group are being widely and repeatedly broadcast, and the social network sites of the governing party are also being used). The campaign includes invective by the President of the Republic and other senior officials and former officials of state institutions, including ministers and members of parliament, who have made unfounded accusations and insulted the group of companies and its President by referring to them as “enemies of the people”, “traitors of the homeland”, supporters of “economic war and destabilization in the country”, people who “hide food products from the population” and “forge links with criminal gangs”. The President of the corporate group has also been vilified as a “devil” or a “murderer” and as being “corrupt” (these stigmatizing remarks are often accompanied by similar accusations against FEDECAMARAS). Furthermore, this group of companies is constantly threatened with expropriation and denied access to official foreign currency for purchasing imported factors of production. The IOE and FEDECAMARAS denounce in particular: (i) acts of violence – they refer to an incident in which pro-government groups violently seized five lorries belonging to companies in the group while police officers who are under the command of the Government took no action; (ii) moral and economic hounding and harassment of this corporate group by government-controlled inspection and regulatory bodies – a number of examples are quoted, including 38 inspections within four days, more than 627 inspections at one of the companies in 2015, 75 inspections at the group’s beer company between 29 April and 17 May 2016, which were accompanied by the presence of state security forces, and an excessive and unreasonable fine equivalent to US\$87,000 imposed in November 2015 for allegedly failing to provide necessary information on time; (iii) incidents in which the President of the Republic himself confiscated, expropriated, or threatened to expropriate facilities, causing permanent damage to the property of this group of employers in at least eight cases, in defiance of legal requirements and procedures or the constitutional guarantees of the right to defence and due process; (iv) persecution and invasion of the privacy of the President of the group by recording his private conversations and threatening him with measures depriving him of his liberty (with reference in particular to the broadcasting on television of a conversation between the President of the corporation and a Venezuelan economist living abroad about the fragile economic state of the country, upon which the then President of the National Assembly accused both of “conspiring against

the homeland” and the President of the Republic himself accused them of economic warfare and requested that a judicial investigation and proceedings be initiated against the President of the corporate group); and (v) harassment and detention of seven managers in irregular proceedings which violated the right of defence and due process, against the backdrop of a suspension of production on account of a shortage of raw materials and imported inputs. Despite the fact that lay-offs were due to force majeure, the authorities ordered that workers be put back to work, although that was impossible. They therefore claimed that the managers were in contempt of court because they had been unable to put those workers back to work and ordered the detention of these company representatives (although detention did not exceed 48 hours in the most recent cases, alternative precautionary measures were imposed, such as requiring these managers to appear before a court and prohibiting them from leaving the country).

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The IOE and FEDECAMARAS consider it imperative that the Government end its systematic violations of the ILO Conventions, violations which undermine the sustainability of jobs, businesses and employers’ organizations in the country as well as infringing fundamental labour rights. As a result, it hopes that decisive action will be taken by the Governing Body and that the possible appointment of a Commission of Inquiry will be considered.